

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EMPIRE FIRE AND MARINE
INSURANCE COMPANY,

Plaintiff,

Civil Action No. 13-cv-5122(ARR)(JMA)

- against -

IMAGE RENT A CAR INC.,
WIRELESS PROMOTIONS CELLULAR
INC., NEWTON GERMAIN, JEFFRY
MIDDLETON and EMMANUEL COICOU,

Defendants.

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Defendant, Image Rent A Car Inc. (“Image”), by its attorney Richard A. Klass, Esq., in answering the Complaint of Plaintiff, alleges as follows:

1. That Image admits the allegations contained in paragraphs 1, 17, 22, 25, 34, 75-76, 78, and 118-120.
2. That Image denies the knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation as contained in paragraph 2.
3. That Image denies the knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation as contained in paragraph 3, but admits that Empire has been and is currently providing for the defense of Image in its defense of the personal injury action instituted by Emmanuel Coicou in Supreme Court, Kings County, Index No. 10744/2010 (the “Coicou Action”).
4. That Image denies the knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation as contained in paragraphs 4, 7-9, 11-16, 18-21, 23-24 and 26-32.

5. That Image denies the knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation as contained in paragraph 35, but admits that the law firm of White, Fleischner and Fino filed an Answer to the Amended Complaint on behalf of Image in the Coicou Action.

6. That Image denies the knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation as contained in paragraphs 36-41.

7. That Image denies the knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation as contained in paragraph 42, but admits that White, Fleischner & Fino, who was retained by Empire, is currently providing a defense to Image in the Coicou Action.

8. That Image denies the knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation as contained in paragraphs 43-74, 81-88, 90, 93-117 and 126-134.

9. That Image denies each and every allegation as contained in paragraphs 5-6, 10, 33, 77, 79-90, 89, 91-92, and 121-125.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

10. That Image filed a petition under Chapter 7 of the Bankruptcy Code, which remains currently pending in the United States Bankruptcy Court for the Eastern District of New York, Case No. 1-11-42390-nhl.

11. Pursuant to Bankruptcy Code Section 362(c), this action is stayed and Plaintiff may not need without relief from the Bankruptcy Court.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

12. The Complaint is barred in whole or in part based upon documentary evidence.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

13. The Complaint of Plaintiff fails to state a cause of action upon which relief may be granted.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

14. That Defendant fulfilled its duty to cooperate with Plaintiff under the terms of the subject policy.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

15. That Defendant sufficiently cooperated with Plaintiff to the extent that there can be no inference of willfulness on its part.

WHEREFORE, Image demands judgment dismissing the Complaint of Plaintiff, and for such other and further relief as this Court deems just and proper.

LAW OFFICE OF RICHARD A. KLASS, ESQ.

Dated: Brooklyn, New York
December 3, 2013

By _____/s/_____
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Image Rent A Car, Inc.